

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
PRODUCE INC., and SIX L'S)
PACKING COMPANY, INC.,)
)
Defendants.)
_____)

CIVIL ACTION NO.:
2:03-cv-570-FtM-29DNF

CONSENT DECREE

1. This Consent Decree is entered into by and between Plaintiff, the United States Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC"), Plaintiff-Intervenors, Myriam Seide (hereinafter referred to as "Ms. Seide"), Marie Francois (hereinafter referred to as "Ms. Francois") and Elaine Francis (hereinafter referred to as "Ms. Francis") (hereinafter referred to collectively as "Plaintiff-Intervenors") and the Defendants, Produce, Inc., (hereinafter referred to as "Produce") and Six L's Packing Company, Inc. (hereinafter referred to as "Six L's Packing") (hereinafter referred to collectively as "Defendants"). The Commission, Plaintiff-Intervenors, and Defendants are collectively referred to as the "Parties".
2. The Commission filed this action on September 30, 2003 under Title VII of the Civil Rights Act of 1964 ("Title VII") and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex (female), and retaliation and to provide appropriate

relief to Myriam Seide, Marie Francois, and Elaine Francis who were adversely affected by such practices.

3. The court granted Plaintiff-Intervenors' Motion to Intervene in the above-styled case. Plaintiff-Intervenors' Complaint alleged that Defendants violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(e) et seq. ("Title VII"), Title I of the Civil Rights Act of 1991, and Florida Civil Rights Act (FCRA), Fla. Stat. §760.01 et seq.
4. In the interest of resolving this matter, to avoid the costs of litigation, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. By entering into this Decree the Defendants make no admission of liability or wrongdoing, and specifically deny liability for the claims made and of any alleged wrongdoing. This Decree is final and binding upon the Parties, their successors and assigns.
5. The parties agree that this Decree resolves all the claims against Defendants alleged in EEOC charge numbers 150 02 00074, 150 02 00075, 150 02 00076 and civil action number 2:03-CV-570-FTM-29DNF. The Parties further agree that this Decree does not resolve any Charges of Discrimination that may be pending with the EEOC other than the charges referred to in this paragraph.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings filed by the parties, it is ORDERED, ADJUDGED AND DECREED THAT:

I. JURISDICTION

6. This court has jurisdiction of the subject matter of this action and over the Parties for the purposes of entering and enforcing this Decree.
7. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of the EEOC to bring an enforcement suit upon alleged breach of any terms of this Decree.

II. GENERAL PROVISIONS AND INJUNCTIVE RELIEF

8. The Defendants, their officers, managers, employees, agents, partners and assigns, are enjoined from engaging in any conduct which violates Title VII by adversely affecting the terms and conditions of any individual's employment because of their sex.
9. Defendants, their officers, managers, employees, agents, partners and assigns, shall not discriminate against any individual who opposes any of Defendants' practices which the employee believes to be unlawful employment discrimination, who files a charge of discrimination with the EEOC alleging violations of the statutes the Commission enforces; who cooperates with the EEOC in investigation and /or prosecution of any charge of discrimination; or who cooperated in the investigation or who offered testimony or information in the above styled litigation which resulted in this Consent Decree.

III. DEVELOPMENT OF POLICES AND TRAINING

10. Defendants have established a written sexual harassment and retaliation policy which is attached hereto as Exhibit A. A complete copy of this policy will be distributed to all their current employees at their facilities in the State of Florida within sixty (60) days of the entry of this Decree, or within thirty (30) days of start-up of any operation or facility which is

inactive on the date of this Decree. Defendants further agree that all new employees will be provided a copy of the policy within two weeks of employment.

11. In order to further ensure the effective implementation of Defendants' anti-discrimination policies, Defendants will conduct a minimum of two (2) hours of annual training throughout the duration of this Decree for all of their managers and supervisory personnel at their Immokalee, Florida facility, with specific emphasis on recognizing sexual harassment and acts that constitute unlawful retaliation and the proper procedure to be followed if they become aware of sexual harassment or retaliation in the workplace and/or if they receive a complaint of such harassment or retaliation for complaining about sexual harassment. Defendants agree to provide the EEOC with at least two (2) weeks notice before they conduct their training session(s), with the date(s) and location(s) of the training, the identification of any training materials to be used at the training session, and the name and job title of the employees who will be in attendance at the training. The training will be conducted by Susan Merris, John F. Potanovic, Esq., or Chery Lynn Dratler or Charlotte Mack King of Resource Innovation, Inc., or any similarly qualified party approved by the EEOC. Additionally, Defendants agree that the EEOC may, at the EEOC's discretion, and with at least forty-eight (48) hours advance notice to Defendants, be in attendance at each training session(s).
12. Defendants agree that the initial training described herein shall be conducted in September 2004 and should thereafter take place annually in the same format for the duration of this Decree. Defendants further agree that the training described in paragraph 11 shall be given to all new managers and supervisors who did not attend the annual training within sixty (60) days of being placed in a management or supervisory position, and that the training may be

via video recording of training previously provided by the Defendants pursuant to paragraph 11.

IV. POSTING

13. Defendants shall post a laminated 8x14 size copy of the notice attached hereto as Exhibit B within ten (10) days of the entering of this Decree. Said notice shall be posted in conspicuous locations accessible to all employees. (i.e. break room, employee bulletin board, cafeteria, above water fountains, etc.). This notice is to remain posted for the term of this Decree. Such policy shall be posted in Spanish and/or Creole in addition to the English version.

V. REPORTING AND MONITORING

14. Defendants will retain all employment records relating in any way to any complaint made to a supervisor, manager or human resource officer and to any investigation of sexual harassment or retaliation for complaining of sexual harassment. The records are to be maintained at Defendants' Immokalee, Florida facility for the duration of this Decree and as required by federal law.
15. For the duration of this Decree, Defendants will provide the EEOC annually with the name, last known address and last known phone number of any person employed at Defendants' State of Florida locations who has complained to his or her Manager/Supervisor, Human Resources Department, or the President that he or she has been subjected to sexual harassment or retaliation while working at Defendants' State of Florida locations during the preceding year. Defendants will also state their actions taken in response to each such allegation. Prior to submitting this information, Defendants will provide each identified

employee with the Acknowledgment Form attached hereto as Exhibit D. The first report shall be submitted no later than September 30, 2004. Defendants will provide upon request by the Commission (a) a copy of the complaint, or if no written complaint was filed, a statement describing the nature of the complaint; (b) a statement describing the actions taken; and (c) outcome regarding such complaint.

16. Defendant will certify to the EEOC every six (6) months throughout the duration of this Decree that it is in compliance with all aspects of this Decree. The first such certification will be due no later than September 30, 2004, and thereafter semi-annually on September 30th and March 31st throughout the duration of this consent Decree.
17. Defendants appoint Susan Merris, Human Resources Director, who shall be responsible for coordinating Defendants' compliance with this Consent Decree and for providing reports to the EEOC. All reports and documents required to be delivered by Defendants to the EEOC pursuant to this Consent Decree shall be mailed to: United States Equal Employment Opportunity Commission, Attention : Office of the Regional Attorney, 1 Biscayne Tower Building Suite 2700, 2 South Biscayne Blvd, Miami, FL 33131.

VI. EXPUNGEMENT OF ENTRIES FROM PERSONNEL RECORDS

18. Defendants agree to remove from Myriam Seide's personnel file, the termination records regarding Ms. Seide within ten (10) calendar days of the entry of this Decree. Defendants further agree to give Ms. Seide a positive letter of reference as set forth in Exhibit C, within ten (10) calendar days of the entry of this Decree.

VII. MONETARY RELIEF

19. Defendants shall pay a lump sum in the amount of two hundred and six thousand dollars (\$206,000.00) in resolution of this litigation. The monies shall be distributed as set forth below:

- a. Sixty-eight thousand six hundred sixty-seven dollars (\$68,667.00) shall be representative of compensatory damages for Ms. Myriam Seide and attorney fees. Defendants shall issue the check in this amount to Myriam Seide and the Arias Law Firm, P.A. The check shall be mailed to the Arias Law Firm at 3013 Del Prado Boulevard, Suite 2, Cape Coral, Florida 33904. Defendants may issue a 1099 to the Arias Law Firm, P.A. for this amount.
- b. Sixty-eight thousand six hundred sixty-six dollars (\$68,666.00) shall be representative of compensatory damages for Ms. Elaine Francis and attorney fees. Defendants shall issue the check in this amount to Elaine Francis and the Arias Law Firm, P.A. The check shall be mailed to the Arias Law Firm at 3013 Del Prado Boulevard, Suite 2, Cape Coral, Florida 33904. Defendants may issue a 1099 to the Arias Law Firm, P.A. for this amount.
- c. Sixty-eight thousand six hundred sixty-seven dollars (\$68,667.00) shall be representative of compensatory damages for Ms. Marie Francois and attorney fees. Defendants shall issue the check in this amount to Marie Francois and the Arias Law Firm, P.A. The check shall be mailed to the Arias Law Firm at 3013 Del Prado Boulevard, Suite 2, Cape Coral, Florida 33904. Defendants may issue a 1099 to the Arias Law Firm, P.A. for this amount.

d. All payments referenced in paragraphs 19a-c shall issue within twenty (20) calendar days from the Court's execution of this Decree, by certified mail in the name of: "Ms. Myriam Seide and Victor M. Arias, P.A., her attorney", "Ms. Elaine Francis and Victor M. Arias, P.A., her attorney", "Ms. Marie Francois and Victor M. Arias, P.A., her attorney"; and forwarded to Victor M. Arias, Esq., Arias Law Firm, P.A., 3013 Del Prado Boulevard, Suite 2, Cape Coral, Florida 33904. Copies shall be forwarded to the attention of Cheryl Cooper, Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

20. If Defendants fail to tender the above-mentioned payments as set forth in paragraph 19 above, then Defendants shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance of Defendants.

VIII. DISMISSAL

21. Within ten (10) days of tender of the payments set forth in paragraph 19, the parties shall file a Notice of Dismissal of this action. Dismissal of this action will be without prejudice to the Commission's enforcement rights described herein.

IX. ENFORCEMENT

22. The Commission shall have independent authority to seek judicial enforcement of each aspect, term, provision and attachment of this Decree.

23. The court will take whatever measures necessary to effectuate the terms of this Decree.

X. COSTS

24. Each party shall bear its own costs and attorneys' fees associated with this litigation from the monetary relief provided in this Decree.


XI. DURATION OF CONSENT DECREE

24. The duration of this Decree shall be three (3) years from the date of entry of the Decree.

SO ORDERED ADJUDGED AND DECREED, this ____ day of October 2004.

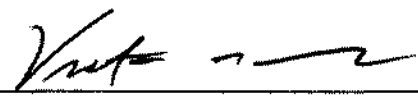
JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

AGREED TO:
FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: 
Delner Franklin-Thomas
Regional Attorney
U.S. Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131


Date: 10-29-04

AGREED TO:
FOR THE PLAINTIFF-INTERVENORS
ELAINE FRANCIS, MARIE FRANCOIS and MYRIAM SEIDE

by: 
Victor M. Arias, Esquire
Arias Law Firm, P.A.
3013 Del Prado Boulevard, Suite 2
Cape Coral, Florida 33904

Date: 10/18/09

AGREED TO:
FOR THE DEFENDANTS
PRODUCE INC. and SIX L'S
PACKING COMPANY, INC

by: 
John F. Potanovic, Esquire
Henderson, Franklin, Starnes & Holt, P.A.
P.O. Box 280
Fort Myers, Florida 33902

Date: 10-12-04

EXHIBIT A

Policy Name: Harassment Policy
Effective Date: 04/01/03
Last Updated: 09/20/04

Purpose of Policy: It is the goal of the Company to promote a workplace that is free of discrimination and any form of harassment, based on race, color, religion, age, sex, national origin, disability or marital status, or other characteristic or category protected by law.

Summary: Harassment, including sexual harassment, of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against individuals for cooperating with an investigation of harassment, including sexual harassment, complaint is similarly unlawful and will not be tolerated.

Method: To achieve our goal of providing a workplace free from all harassment, including sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees. Because the Company takes allegations of harassment seriously, we will respond promptly to complaints of harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Procedure: Please note that while this policy sets our goals of promoting a workplace that is free of harassment, the policy is not designed to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definitions included in this policy.

Sexual Harassment

One definition for sexual harassment is: "sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- (1) Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decision;

Or,

- (2) Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increase benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute harassment, including sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- 1 Unwelcome or unwanted advances, including sexual advances
- 2 Unwelcome requests or demands for favors, including sexual favors
- 3 Subtle or blatant expectations, pressures or requests for any type of favor, including a sexual favor (this includes unwelcome requests for dates.)
- 4 Verbal abuse that is oriented toward a prohibited form of harassment, including that which is sex-oriented and considered unwelcome.
- 5 Any type of sexually-oriented conduct or other prohibited form of harassment that would unreasonably interfere with our work performance
- 6 Creating a work environment that is intimidating, hostile, abusive or offensive because of unwelcome or unwanted conversations, suggestions, requests or demands. This includes sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess; displaying sexually suggestive or otherwise offensive objects, pictures, cartoons; inquiries into one's sexual experiences; and, discussion of one's sexual activities.
- 7 Physical contacts or attentions including unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments whether sexually oriented or otherwise related to a prohibited forms of harassment.

All employees should take special note that, as stated above, retaliation against an individual who has complained about harassment, including sexual harassment, and retaliation against individuals for cooperating with an investigation of a harassment complaint is unlawful and will not be tolerated by this organization.

Complaints of Harassment

If any of our employees believes that he or she has been subjected to harassment or sexual harassment, the employee has the right to file a complaint with our organization. This may be done in writing or orally. If you would like to file a complaint you may do so by contacting your supervisor, your manager, or Human Resources. Human Resources is also available to discuss any concerns you may have and to provide information to you about our policy on harassment, including sexual harassment and our complaint process. Human Resources is located at the World Agriculture Building (formally the Sun Rich Building), 907 East Main Street Street, Immokalee, FL 34142, 239-657-4421.

Harassment Investigation

When we receive the complaint we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with the witnesses. We will also interview the person alleged to have committed harassment. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate we will also impose disciplinary action, up to and including termination.

I have read the above Harassment Policy and understand the contents of this policy.

Employee Date

Witness Date

EXHIBIT B

NOTICE TO ALL EMPLOYEES POSTED PURSUANT TO AN AGREEMENT BETWEEN THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND PRODUCE, INC. AND SIX L'S PACKING COMPANY, INC.

This notice is being posted pursuant to an Agreement between the Company and the EEOC, and entered by the Court in EEOC vs. Produce, Inc. and Six L's Packing Company, Inc., Civil Action No. 2:03-CV-570-FtM-29DNF. Produce, Inc.'s and Six L's Packing Company, Inc.'s policy prohibits discrimination against employees in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, or sex. Title VII also protects individuals from retaliation for having made a good-faith complaint of an unlawful employment practice. Produce and Six L's Packing will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, sexual harassment.

Furthermore, Produce and Six L's Packing, support Title VII and will not take any retaliatory action against an individual because he/she has made a good-faith exercise of his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

Appropriate corrective action, up to and including termination, based upon the circumstances involved, shall be taken against any employee (including management personnel) found to have violated Produce and Six L's Packing's policies prohibiting discrimination.

Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may telephone Produce and Six L's Packing's Human Relations Department at _____ or the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000.

Signed this ____ day of _____, 2004.

PRESIDENT/CEO, Produce, Inc.

PRESIDENT/CEO, Six L's Packing Company, Inc.

THIS NOTICE SHALL REMAIN POSTED AND
NOT REMOVED BEFORE _____, 2007.

EXHIBIT C

**Produce Inc
PO Box 3088
Immokalee, FL 34143
239 657-4421**

September 24, 2004

To Whom It May Concern:

Myriam Seide, social security [REDACTED] has been employed by our company. She worked as a seasonal Grader. She was employed 10/28/99 – 06/16/00, 11/09/00 – 03/24/01, and 07/10/03 – 09/17/03. Ms. Seide was a dependable employee.

If you have any questions, please feel free to give me a call.

Sincerely,

Susan Merris
Human Resources Director

EXHIBIT D

NOTICE REGARDING MONITORING AGREEMENT WITH EEOC

Produce, Inc. and Six L's Packing Company, Inc. have entered into an agreement with the United States Equal Employment Opportunity Commission (EEOC). Part of the agreement provides that the companies will provide the EEOC with certain information concerning any sexual harassment or retaliation complaints received by the companies from any employee(s) during the term of the agreement. In addition, the name, address, and phone number of a complaining employee will be shared with the EEOC. Please sign below to acknowledge that you have been advised that this information will be provided to the EEOC.

Signature

Print name: _____

Date: _____